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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,678	07/14/2003	Yin-Shu Yang	YANG3146/EM	4122
23364	7590	03/23/2004	EXAMINER	
BACON & THOMAS, PLLC 625 SLATERS LANE FOURTH FLOOR ALEXANDRIA, VA 22314			GUTMAN, HILARY L	
		ART UNIT	PAPER NUMBER	
		3612		

DATE MAILED: 03/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/617,678	YANG, YIN-SHU	
	Examiner Hilary Gutman	Art Unit 3612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on \_\_\_\_\_.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-5 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_ is/are allowed.  
 6) Claim(s) 1-5 is/are rejected.  
 7) Claim(s) \_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 14 July 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application (PTO-152)  
 6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Drawings***

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: 1 as seen in Figures 1-2.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the curved pipe section at both ends of the straight tubular section of the anchors of the side rack rod of claim 3 and the sleeve being interconnected between a straight pipe section and a curved pipe section of claim 4 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

4. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

*Specification*

5. The disclosure is objected to because of the following informalities:

On page 2, line 5, “selves” should be “shelves”. On line 7, “therefore” should be deleted.

On line 12, “are” should be deleted.

On page 3, line 8, “for our examiner” should be deleted. On line 9, “we use” should be deleted”. On line 10, “is used” should be inserted after “embodiment”.

On page 5, line 9, “long” (second occurrence) should be “hole”.

Appropriate correction is required.

*Claim Objections*

6. Claims 1 and 3 are objected to because of the following informalities:

In claim 1, on line 4, “each” should be inserted before “said fixed base”. On line 5, “long” (second occurrence) should be “holes”,

In claim 3, line 4, “two” should be “said pair of”. Appropriate correction is required.

*Claim Rejections - 35 USC § 112*

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

8. Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, lines 5-7, the limitation “a range of various sizes” is vague and indefinite as to what this range might include and as to how the maximum and minimum distances between the two holes is being measured.

In claim 2, line 2, the limitation that the straight pipe section is “interconnected” is vague and indefinite since it is unclear to what the pipe section is connected. Perhaps additional language should be added after “the phrase “interconnected”.

In claim 3, line 4, the recitation that curved pipe section is “at both ends” of the straight tubular section is misleading in that the anchor only apparently has a curved pipe section at one end and engages the sleeve at the other end. Additionally, on lines 5-7, the limitation “a range of various sizes” is vague and indefinite as to what this range might include and as to how the maximum and minimum distances between the two holes is being measured.

In claim 4, lines 2-3, the recitation that eh sleeve is interconnected between the straight pipe section and the curved pipe section of the anchor is misleading and unclear since it appears that the sleeve is interconnected between two separate straight pipe sections (as seen in Figs 3-4) and not between a straight pipe section and a curved pipe section as recited.

#### *Claim Rejections - 35 USC § 102*

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Benedict.

Benedict (6,312,202) discloses a side rack rod 20 for motor vehicle, comprising: a straight tubular pipe section 22; a curved pipe section 24, 26, respectively disposed on both ends of the straight tubular pipe section; a fixed base 32, disposed under each curved pipe section; characterized in that each fixed base comprising a long groove hole 36 thereon, and the maximum and minimum distance between the two long groove holes is variable so as to fit a range of various sized truck beds.

With regard to claim 2, the straight pipe section is hollow inside and interconnected to each curved pipe section.

***Claim Rejections - 35 USC § 103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bundy in view of Benedict.

Bundy (5,904,458) discloses a side rack rod for motor vehicle, comprising: a pair of corresponding anchors 10, each having a straight tubular section 20; a curved pipe section 18 at one end of the straight tubular section; a fixed base 34, 70 at each curved pipe section, and a sleeve 30 disposed between the pair of anchors; wherein the fixed bases each have a hole 36, 68.

With regard to claim 4, the sleeve 30 is hollow and interconnected between the straight pipe sections of each of the anchors.

Bundy lacks the holes being long groove holes such that the maximum and minimum distances between the two long groove holes fitting a range of various sizes.

Benedict (6,312,202) teaches a side rack rod 20 for motor vehicle, comprising: a straight tubular pipe section 22; a curved pipe section 24, 26, respectively disposed on both ends of the straight tubular pipe section; a fixed base 32, disposed under each curved pipe section; characterized in that each fixed base comprising a long groove hole 36 thereon, and the maximum and minimum distance between the two long groove holes is variable so as to fit a range of various sized truck beds.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided a long groove hole as taught by Benedict in place of the hole of Bundy in order to adjustably mount the side rack rod for various sized trucks.

***Allowable Subject Matter***

13. Claim 5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

14. The following is a statement of reasons for the indication of allowable subject matter: the primary reason for the indication of allowable subject matter for this case is the inclusion of the specific straight pipe section having a length larger than that of the sleeve of claim 5, which is not found in the prior art of record.

*Conclusion*

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 703-305-0496.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 703-308-3102. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

17. **Any response to this action should be mailed to:**

Assistant Commissioner for Patents

Washington, D.C. 20231

**or faxed to:**

(703) 872-9326, (for formal communications intended for entry)

**or:**

(703) 746-3515, (for informal or draft communications, please clearly label  
“PROPOSED” or “DRAFT”).

*Hilary Gutman*  
3612  
3/12/04